

EXHIBIT A



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/645,279

08/20/2003

Keith Ballinger

13768.455

7258

22913

7590

02/17/2010

Workman Nydegger
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111

EXAMINER

PATEL, CHANDRAHAS B

ART UNIT

PAPER NUMBER

2464

MAIL DATE

DELIVERY MODE

02/17/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Abandonment	Application No.	Applicant(s)	
	10/645,279	BALLINGER ET AL.	
	Examiner	Art Unit	
	Chandrahass Patel	2464	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 16 March 2009.
 - (a) ☒ A reply was received on 15 June 2009 (with a Certificate of Mailing or Transmission dated 15 June 2009), which is after the expiration of the period for reply (including a total extension of time of 1 month(s)) which expired on 4/16/2009.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

/Ricky Ngo/
Supervisory Patent Examiner, Art Unit 2464

/Chandrahass Patel/
Examiner, Art Unit 2464

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

EXHIBIT B



WORKMAN | NYDEGGER
INTELLECTUAL PROPERTY ATTORNEYS

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ELECTRONICALLY FILED

PATENT APPLICATION
Docket No. 13768.455

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of)
)
	Keith Ballinger, et al.)
)
Serial No.:	10/645,279) Art Unit
) 2416
Filed:	August 20, 2003)
)
Conf. No.:	7258)
)
For:	CUSTOM ROUTING OF OBJECT REQUESTS)
)
Examiner:	Chandrabhas B. Patel)
)
Customer No.:	47973)

TRANSMITTAL FOR PETITION UNDER 37 C.F.R. § 1.137(b) TO REVIVE
AN UNINTENTIONALLY ABANDONED APPLICATION WITH
SUPPLEMENTAL AMENDMENT "E" AFTER NON-FINAL AND
ONE (1) MONTH EXTENSION OF TIME

ELECTRONICALLY FILED
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is a Petition to Revive an Unintentionally Abandoned Application Under C.R.F. § 1.137(b) with Amendment "E" and Response for entry in the above-identified application.

X Included herewith is:

X Response

X Petition to Revive an Unintentionally Abandoned Application (\$1,620.00)

X Petition for One Month Extension of Time (\$130.00)

X No other additional fee is required.

X Payment in the amount of \$1,750.00 using the Credit Card payment option in E-Filer with RAM will be used to cover the payment of the fees with respect to the Petition to Revive Unintentionally Abandoned Application.

X The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 C.F.R. § 1.16; (2) any patent application and reexamination processing fees under 37 C.F.R. § 1.17; (3) any fees for filing a terminal disclaimer under 37 C.F.R. §§ 1.321(c) and 1.20(d); and/or (4) any post issuance fees under 37 C.F.R. § 1.20. If any extension of time is required, beyond that already requested, please consider this a petition therefore and charge any additional fees that may be required to Deposit Account No. 23-3178.

Dated this 15th day of June, 2009.

Respectfully submitted,



COLBY C. NUTTALL
Registration No. 58,146
RICK D. NYDEGGER
Registration No. 28,651
Attorneys for Applicant
Customer No. 047973

EXHIBIT C



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

WORKMAN NYDEGGER
1000 EAGLE GATE TOWER
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SALT LAKE CITY UT 84111

COPY MAILED

SEP 18 2009

OFFICE OF PETITIONS

In re Application of
Ballinger, et al.
Application No. 10/645,279
Filed: 20 August, 2003
Attorney Docket No. 13768.455

DECISION

This is a decision on the petition filed on 15 June, 2009, for revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b).

The petition under 37 C.F.R. §1.137(b) is **DISMISSED**.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

Petitioners' attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the final Office action mailed on 12 September, 2008, with reply due under absent an extension of time on or before 12 December, 2008

On 11 December, 2008, Petitioner filed an amendment after final, which the Examiner refused to enter and Petitioner—as one registered to practice before the Office—knew was not as of right

and not a proper reply¹ if it did not *prima facie* place the application in condition for allowance, and on 7 January, 2009, the Examiner mailed an Advisory Action.

On 11 March, 2009, Petitioner filed, *inter alia*, a request and fee for extension of time, a reply in the form of a request for continued examination (RCE) and fee and a submission under the provisions of 37 C.F.R. §1.114 in the form of an amendment.

On 16 March, 2009, the Office mailed a Notice of Non-Compliant Amendment—which specified that no new time period for reply was provided if the amendment was after-final or after allowance or drawings only, but did grant a one month period for reply and permit extensions of time pursuant to 37 C.F.R. §1.136(a) if the non-compliant amendment was, *inter alia*, “a submission for request for continued examination.”

It appears that the Office did not mail a Notice of Abandonment before the instant petition was filed.

On 15 June, 2009, Petitioner filed, *inter alia*, a petition pursuant to 37 C.F.R. §1.137(b), with fee, with a statement of unintentional delay and a reply in the form of an amendment, with a request and fee for extension of time (one- (1-) month) and authorization to charge Deposit Account 23-3178 for fees as required. It appears that a three- (3-) month extension of time was required to make timely the reply to the 16 March, 2009, Notice—which fee is charged in the place of the fee paid. Thus, the application was not abandoned—the petition is moot and the fee is refunded. Should Petitioner later find that the fee was not refunded, Petitioner should request a refund from the Office of Finance and provide a copy of this petition therewith.

Again, Petitioners’ attentions always are directed to the guidance in the Commentary at MPEP §711.03(c)(II).

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.²

¹ A proper reply is an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or an RCE (with fee and submission under 37 C.F.R. §1.114). (See: MPEP §711.03(c).)

² See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner’s duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).³

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.⁴

As to Allegations of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee.

It appears that the petition pursuant to 37 C.F.R. §1.137(b) is moot.

CONCLUSION

Accordingly, the petition pursuant to 37 C.F.R. §1.137(b) is **dismissed as moot**.

The instant application is released to the Technology Center/AU 2416 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to that change in status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.


³ 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

⁴ Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2⁵) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).



/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

⁵ The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.